IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3950 of 2006
To
FIRST APPEAL No. 3969 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER - Appellant
Versus
GHANSHYAMBHAI TRIKAMBHAI & 1 - Respondents

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Appearance :
MR S.S.SHAH, GOVERNMENT PLEADER for Appellant in F.A. No.3950 to 3959/06
MS SANDHYA D.NATANI ASSISTANT GOVERNMENT PLEADER for Appellant in F.A. No.3960 to 3969/06
MR AJ PATEL for Claimant/s

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 05/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

What is the questioned in these appeals which are filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated August 11, 2004 rendered by the learned 3rd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Ahmedabad in Land Acquisition Case No. 2029 of 1996 and 599 of 1998 to 617 of 1998, by which the claimants have been awarded additional amount of compensation at the rate of Rs.18/- per sq.mt. for their acquired lands over and above the amount of compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.3.75 ps. per sq.mt. by his award dated September 30, 1995.

2. A proposal was received by the State Government to acquire the lands of village Anadej, Taluka:Sanand, District:Mehsana for the public purpose of construction of a canal under the Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Anadej mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the Official Gazette on August 20, 1992. Thereafter necessary inquiry under Section 5 of the Act was made and a report under Section 5 A (2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On the basis of the said report the State Government was satisfied that the lands of village Anadej specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of a canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the Official Gazette. The interested persons were thereafter served with

notices for determination of the amount of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mt. However, having regard to the materials placed before him the Special Land Acquisition Officer by his award dated September 30, 1995 offered compensation to the claimants at the rate of Rs.3.75 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made to them by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for determination of just amount of compensation payable to them. Accordingly, references were made to District Court Ahmedabad (R) at Navrangpura where they were registered as Land Acquisition Case No.2029 of 1996 and 599 of 1998 to 617 of 1998

3. On behalf of the claimants witness Chimanbhai Maganbhai Patel was examined at Exh.39. The witness

stated in his evidence that the lands acquired were highly fertile and that each claimant was earning substantial income from the sale of agricultural produces. During the course of recording of his testimony the witness produced previous award of the Reference Court relating to the lands of village Chandrasan and claimed that on the basis of the said award the enhanced amount of compensation should be paid to the claimants.

4. On behalf of the acquiring authorities no witness was examined.

5. On appreciation of evidence adduced by the claimants the Reference Court was of the opinion that previous award of the Reference Court relating to lands of village Chandrasan furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. Placing reliance on the said previous award, the Reference Court has awarded additional amount of compensation at the rate of Rs.18/- per sq.mt. to the claimants, by the impugned award giving rise to the above numbered

appeals.

6. This Court has heard Ms.Sandhya D. Natani, learned Assistant Government Pleader for the appellants and Mr.A.J.Patel, learned counsel for the claimant/claimants in each appeal. This Court has also considered the paper-books supplied by the learned counsel for the claimants which includes oral as well as documentary evidence adduced before the parties before the Reference Court.

7. A bare reading of the impugned award makes it evident that what was relied upon by the Reference Court for the purpose of awarding additional amount of compensation, is at Exh.38 which is the previous order relating to the lands of village Chandrasan, Taluka: Kadi, District: Mehsana. It may be mentioned that the lands in the instant case were acquired from Village Anadej, Taluka Sanad, District: Ahmedabad. The distance between village Chandrasan which is situated in Taluka: Kadi and Village Anadej from which the lands have been acquired in the instant case is more than 8 kilometers. This is quite

evident if one refers to the testimony of Chimanbhai Maganbhai Patel examined by the claimants. Further the similarity of the lands of village Chandrasan and village Anadej could not be established by the witness for the claimants at all. Under the circumstances this Court is of the opinion that previous order of the Reference Court relating to the lands of village Chandrasan could not have been made basis for the purpose of awarding additional amount of compensation to the claimants. On the facts and in the circumstances of the case, this Court is of the opinion that the Reference Court should have determined the compensation payable to the claimants on the basis of legal, valid, reliable and acceptable relevant evidence and not on the basis of irrelevant evidence. To say the least, the award of the Reference Court is based on whims and is arbitrary. Therefore, it has got vitiated. The learned counsel for the claimants has requested this Court to remand all the matters to the Reference Court for fresh decision in accordance with law after giving opportunity to the parties to lead further evidence. As no evidence was led by the acquiring authorities,

the suggestion made by the learned counsel for the claimants is accepted by the learned Assistant Government Pleader for the appellants. Thus, there is general consensus between the learned advocates for the parties that the matters be remitted to the Reference Court for deciding them afresh after reserving liberty to the parties to lead fresh evidence in support of their respective cases. In view of the agreement arrived by the learned counsel for the parties and the deficiencies in the impugned award which have been noticed earlier, this Court is of the opinion that interest of justice would be served if the matters are remanded to the Reference Court with a direction to decide the same in accordance with law after permitting the parties to led fresh evidence in support of their respective claims.

7. For the foregoing reasons all the appeals succeed. The common judgment and award dated August 11, 2004 rendered by the learned 3rd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Ahmedabad in Land Acquisition Case No. 2029 of 1996

and 599 of 1998 to 617 of 1998, awarding additional amount of compensation to the claimants at the rate of Rs.18/- per sq.mt. is hereby set aside. The matters are remitted to the Reference Court for deciding the same afresh. The parties would be at liberty to lead fresh evidence in support of their respective claims. The Reference Court is directed to decide the references in accordance with law and in the light of the evidence which may be adduced by the parties. Since these proceedings pertain to acquisition of lands initiated in the year 1992, the Reference Court is directed to dispose of the references as expeditiously as possible and without any avoidable delay. The appeals are allowed to the extent indicated hereinabove. There shall be no order as to costs. The registry is directed to transmit the record of the case to the Reference Court forthwith.

[J.M.Panchal, J.]

[Smt. Abhilasha Kumari, J.]

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